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IN THE

Supreme Court of the United States

No. 749 October Term, 1959

ST. PETER'S ROMAN CATHOLIC PARISH, by Dominick Cerminaro and Herman Yannone, Trustee ad Litem,

Appellant,

v.

URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH; CITY OF PITTSBURGH, a municipal corporation; and THE MOST REVEREND JOHN F. DEARDEN, BISHOP OF THE DIOCESE OF PITTSBURGH,

Appellees.

On Appeal from the Supreme Court of Pennsylvania, Western District, at No. 235 March Term, 1958.

MOTION TO DISMISS AND SUPPORTING BRIEF

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Motion To Dismiss

IN THE
SUPREME COURT OF THE UNITED STATES

No. 749
October Term, 1959

St. Peter's Roman Catholic Parish, by Dominick Cerminaro and Herman Yannone, Trustees ad Litem,
v. Appellant
Urban Redevelopment Authority of Pittsburgh; City of Pittsburgh, a municipal corporation; and The Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh, Appellees

On Appeal From Supreme Court of Pennsylvania

MOTION TO DISMISS

Each of the appellees in this case, the Urban Redevelopment Authority of Pittsburgh, the City of Pittsburgh, a municipal corporation, and the Bishop of the Diocese of Pittsburgh, pursuant to the Rules of Your Honorable Court, moves that the appeal from the final judgment of the Supreme Court of Pennsylvania be dismissed for want of jurisdiction, and in support of the motion, avers:

1. The appeal does not present a substantial Federal question.

2. The appeal does not present a justiciable case or controversy within the jurisdiction of Your Honorable Court.

SUPPORTING BRIEF

1. STATEMENT OF THE CASE

The appeal in this case is from a final judgment of the Supreme Court of Pennsylvania, *St. Peter's Roman Catholic Parish v. Urban Redevelopment Authority of Pittsburgh*, 394 Pa. 194, 146 A. 2d 724 (1958), which affirmed the decree of the Court of Common Pleas of Allegheny County, Pennsylvania, sustaining preliminary objections and dismissing a complaint in equity filed by persons who styled themselves, St. Peter's Roman Catholic Parish, by Dominick Cerminaro and Herman Yannone, Trustees ad Litem. The grounds upon which appellant asserts jurisdiction are:

> (1) the alleged construction by the State Supreme Court of the Pennsylvania Act of Assembly, approved June 20, 1935, P. L. 353, Section 1, 10 P. S. 81, which appellant argues is in violation of the Fourteenth Amendment and the ex post facto provisions of the United States Constitution, Article I, Section 10;
>
> (2) a statement that the action of the Urban Redevelopment Authority in condemning under the power of eminent domain certain real property of St. Peter's Roman Catholic Church, a

Parish having Italian membership, violated the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution because the Redevelopment Authority did not also condemn property of another Roman Catholic Parish in the same general area; and

(3) the suggestion that the action of the Redevelopment Authority in condemning the Church property violated the rights of its members to freedom of worship under the First and Fourteenth Amendments of the United States Constitution.

2. STATEMENT OF THE FACTS

In August, 1950, the Lower Hill area of the City of Pittsburgh, constituting in all some 105 acres, was certified as a blighted area by the Planning Commission of the City of Pittsburgh in accordance with the Urban Redevelopment Law of Pennsylvania, approved May 24, 1945, P. L. 991, as amended, 35 P. S. 1701 et seq. St. Peter's Roman Catholic Church, a Parish of the Diocese of Pittsburgh, was included in that area.

After the certification, the City Planning Commission prepared a comprehensive Redevelopment Plan which became a part of the Redevelopment Authority Proposal. This proposal was submitted to the Council of the City of Pittsburgh for approval or disapproval, as provided in the Redevelopment Law.

Council held a public hearing on July 6, 1955. Thereafter, by Ordinance No. 255, approved July 13, 1955, Council approved the Redevelopment Project for the Lower Hill Area.

By Resolution No. 69, approved October 2, 1957, the Urban Redevelopment Authority, pursuant to the power of eminent domain vested in it by Section 9 of the Urban Redevelopment Law, 35 P. S. 1709, made that portion of Redevelopment Area No. 3 (Lower Hill District) comprising St. Peter's Parish, the subject of a condemnation proceeding and appropriated the same for public purposes.

On February 25, 1958, the Authority tendered to the Most Reverend John F. Dearden, then the Bishop of Pittsburgh, as Trustee, a bond as security for the payment of damages. The bond was accepted on the same date. Thereafter, on February 27, 1958, the Urban Redevelopment Authority and the Bishop of Pittsburgh, as Trustee, entered into an agreement as to the damages sustained by the Parish in the taking. The amount agreed upon was $1,240,000.00.

The present action was filed on April 3, 1958, against the Urban Redevelopment Authority and the City of Pittsburgh, seeking, inter alia, to enjoin the Authority from accepting any deed which would dispose of appellant's alleged interest in the land and buildings comprising St. Peter's Roman Catholic Church. The lower court took no action on the Complaint, indicating that the decree prayed for affected rights of the Bishop of the Diocese of Pittsburgh and that since he had not been made a party, the Complaint would not lie. The appellant has never challenged this action of the court.

On April 10, 1958, an amended complaint joining the Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh, as Defendant, was filed and after a hearing on April 11, 1958, the lower court refused to grant a preliminary injunction. Thereafter, each of the Defendants filed preliminary objections to the complaint.

The lower court sustained the preliminary objections and dismissed the complaint. The opinion of the Common Pleas Court is not reported in any official

reports. A copy is contained in the record filed by the appellant.

In the complaint as filed the basic contention was that the property of St. Peter's Church was not blighted and, therefore, that the inclusion of this property in the blighted area was unjust, discriminatory and illegal. The appellant contended, further, that the agreement between the Urban Redevelopment Authority and the Bishop of the Diocese of Pittsburgh was illegal because the appellant had not been given notice of the proceedings or of the agreement. As an incidental argument, appellant contended that the property of St. Peter's Parish was not inferior to the property of Epiphany Parish, also a Parish of the Roman Catholic Church under the jurisdiction of the Bishop of the Diocese of Pittsburgh.

The Pennsylvania Supreme Court affirmed the judgment of the Court of Common Pleas by a unanimous decision. The decision was entered on December 4, 1958. Thereafter, appellant filed a petition for reargument which was refused on December 30, 1958. On the same date, the Supreme Court refused a motion by appellant to amend its pleadings further. The amendment had sought to make the Bishop of the Diocese of Pittsburgh an added party plaintiff in the action. The Bishop was already a party defendant in the action.

On or about January 3, 1959, appellant filed a motion to hold the record in the State Court pending an appeal to the United States Supreme Court. On January 5, 1959, the State Supreme Court refused this

motion, stating that no Federal question appeared to be involved and that none had ever been raised either in the court below or in the Pennsylvania Supreme Court.

On or about March 4, 1959, this appeal to Your Honorable Court was docketed and appellees have been served with a Jurisdictional Statement. This motion to dismiss is filed in behalf of all appellees.

For purposes of information, it should be noted that the Most Reverend John F. Dearden, Bishop of the Diocese of Pittsburgh, was appointed and is now acting as the Archbishop of the Archdiocese of Detroit. Most Reverend John J. Wright is his successor as Bishop of the Diocese of Pittsburgh. Bishop Wright was installed on March 18, 1959.

3. ARGUMENT

(1) There is no substantial Federal question in the questions raised by appellant in this case.

The argument of appellant that the decision of the Pennsylvania Supreme Court transgresses certain provisions of the United States Constitution is an after thought introduced into a dispute involving purely local issues.

Appellant's basic contention in the State Court was that it was improper to include St. Peter's Parish in a certification by the municipal authorities of the Lower Hill District as a blighted area, because St. Peter's Church was not a blighted property.

As the Pennsylvania Supreme Court stated in its opinion, the right to deal with an area rather than with individual properties, and the further right to exempt certain properties from a redevelopment project, have been upheld: *Berman v. Parker*, 348 U. S. 26, 99 L. E. 27 (1958); *Starr v. Nashville Housing Authority*, 145 F. Supp. 498 (1956) aff'd, 354 U. S. 916, 1 L. E. 2d 1432 (1957); *Oliver v. Clairton*, 374 Pa. 333, 98 A. 2d 47 (1953); *Schenk v. Pittsburgh*, 364 Pa. 31, 70 A. 2d 612 (1950).

With respect to the principal issue raised in the appeal to this Court, the Pennsylvania Act of 1935, P. L. 353, 10 P. S. 81, recognizes the inherent right of religious associations to decide for themselves, free

from State interference, matters involving the use and control of church property and the general ecclesiastical government of all the individual members, congregations and officers within a general church association. The Pennsylvania statute was upheld as constitutional in *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 1940 (1937), and has been followed consistently in later decisions of the Pennsylvania Courts: *Post v. Dougherty*, 326 Pa. 97, 191 A. 151 (1937); *Lamb, Bishop v. Yencsik*, 89 D. & C. 35 (1954); *Keefe's Estate*, 89 P. L. J. 429 (1941).

This right of religious associations was specifically upheld in *Kedroff v. Saint Nicholas Cathedral*, 344 U. S. 94, 97 L. E. 120 (1952).

Whether or not the Act of 1935 is retrospective in its application is immaterial in the case at bar in view of the fact that appellant has no standing to sue and has no vested property right.

Indeed, appellant does not claim in any pleading filed in this action that it has any right, under the laws, rules or regulations of the Catholic Church to which it belongs, to represent St. Peter's Parish. Appellant makes no averment to sustain such a right under the canon law of the Catholic Church and there is no assertion that any right has been violated. The State decision in *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, supra, and Your Honorable Court's decision in *Kedroff v. Saint Nicholas* Cathedral, supra, recognize the right of a church to govern its members and emphasize the principle that there can be no right in an individual, on the one

hand, to claim the benefits of membership in a church, and, on the other hand to refuse to obey its rules and regulations.

The decision in the present case does no more than recognize the right of the Bishop of the Diocese of Pittsburgh, as Trustee, to act for a Parish of the Diocese.. This is proper under the canon law; it is recognized by the State of Pennsylvania under the Act of 1935, P. L. 353, 10 P. S. 81, and by the decision of Your Honorable Court in *Kedroff v. Saint Nicholas Cathedral,* supra.

The two remaining questions involving alleged "discriminatory action" by the Urban Redevelopment Authority of Pittsburgh are likewise without merit. The Supreme Court of Pennsylvania did not pass specifically on these matters since its opinion rested primarily on the effect of the 1935 Pennsylvania statute. However, the Court of Common Pleas of Allegheny County expressly held that the allegation of discrimination was not based on adequate supporting facts, and therefore the Complaint was subject to dismissal by Preliminary Objection in the nature of a demurrer. A pleading must state facts and not mere conclusions, and the want of definite allegations essential to a cause of action or defense renders a pleading subject to demurrer. *Southern Railway Co. v. King,* 217 U. S. 524, 54 L. E. 868 (1910); *Pierce Oil Corp. v. City of Hope,* 248 U. S. 498, 63 L. E. 81 (1919); *Narehood v. Pearson,* 374 Pa. 299, 302, 96 A. 2d 895 (1953).

Reduced to its lowest common denominator, this appeal is an attempt to introduce a Federal question by

surmise. The decisions hold that this cannot be done: *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 80 L. E. 688, 711 (1936); *Blumenstock Bros. v. Curtis Publishing Company*, 252 U. S. 436, 64 L. E. 649, 652 (1920); *Jehovah's Witnesses Appeal*, 183 Pa. Superior Ct. 219, 130 A. 2d 240, appeal dismissed for want of a substantial Federal question, 355 U. S. 40, 2 L. E. 2d 71 (1957). See, also, *Herndon v. Georgia*, 295 U. S. 441, 443, 79 L. E. 1530, 1532; *American Surety Company v. Baldwin*, 287 U. S. 156, 77 L. E. 231.

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(2) There is no justiciable question

Appellant is a volunteer; it does not aver any right to represent St. Peter's Church under the rules and regulations of the Catholic Church. Therefore, it has no standing to bring this action, and consequently there is no justiciable question: *Kedroff v. Saint Nicholas Cathedral*, supra, where Your Honorable Court said:

> ". . . It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism provides for. Id. (US) 13 Wall at 728, 729."

CONCLUSION

It is an anomaly to contend that a decision of the State Supreme Court which upholds the right of a religious body to govern its affairs independently of State interference violates the First Amendment of the United States Constitution, made applicable to the States by the Fourteenth Amendment. Appellant's contention, if upheld, would be repugnant to the very section of the Constitution upon which Appellant purports to rely. No case is cited in the Jurisdictional Statement which has any application to the facts of the case at bar. The Pennsylvania cases cited are of no importance or effect since the passage of the Act of 1935, P. L. 353, 10 P. S. 81. That statute, purely procedural, gave proper recognition to the canons, rules, regulations and discipline of religious associations. Appellant had no property right in the property taken by the Urban Redevelopment Authority for the redevelopment of the Lower Hill District, located within an area certified as blighted by the municipal authorities.

Respectfully submitted,

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Argument

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